IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7985 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MANSUKHLAL NAGJIBHAI VHORA

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Misc.Application No. 7985 of 2002

MR NV ANJARIA for Petitioner No. 1-2

MR PR ABICHANDANI, APP for Respondent No. 1

MR YV BRAHMBHATT for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/02/2003

ORAL JUDGEMENT

Present petitioners-original accused against whom

process has been issued by the learned Judicial Magistrate (First Class), Borsad, based on a complaint filed by the respondent No.2-complainant which has been registered as Criminal Case No.2485 of 2000 has preferred the present petition under Sec.482 of the Code of Criminal Procedure read with Article 226 of the Constitution of India.

2. The allegation made in the complaint by the complainant was that the petitioners accused, who had business relation with the complainant through a broker named Uday Patan, used to purchase grains from the complainant from Borsad. Accused Nos.1 and 2, who are permanent residents of Bhuj-Kachchh purchased 20,000 kgs. of wheat on 27-4-2000 and 17-5-2000 by issuing cheques payable at Bhuj Commercial Bank Ltd. It was further alleged that the cheque in question on presentation with the Bhuj Commercial Bank Ltd. was dishonoured on account of insufficient funds and, therefore, notice was issued and ultimately, complaint in question was filed in which process was issued. Hence, the present petition.

3. Heard learned counsel for the petitioners, Mr.N.V.Anjaria, learned APP, Mr.P.R.Abichandani, for the respondent No.1 and learned counsel, Mr.Y.V.Brahmbhatt for the respondent No.2.

4. Learned counsel for the petitioners has argued that the role played by the broker has been given in detail in the complaint. It is further argued that there is no reason to believe that a person residing and doing business at Bhuj would go to Borsad to purchase grains. According to him, no bill or credit memo is produced by the complainant and hence, if at all transaction is alleged to have taken place with the petitioners, then also it is of civil nature. It is further argued that the cheques in question were ever issued by the petitioners but were fraudulently obtained by the complainant. In short, according to him, there is no business relation between the parties and hence, there was no question of issuing any cheque to the complainant.

5. It is to be noted that issuance of cheques by the petitioner No.2 has not been denied anywhere in the petition. It is also not the case of the petitioners that cheques alleged to have been drawn in favour of the complainant were not from the account of petitioner No.2. Prima-facie fact remains that on presentation of the cheque issued by the petitioner No.2 with the banker of the complainant was dishonoured on account of insufficient funds. Hence, what is required to be seen

is whether the cheque dishonoured on presentation with the banker of the complainant was from the account of the petitioner No.2. In this case, since cheque was of the account of the petitioner No.2, complainant is entitled to file the complaint and hence, at this stage, it cannot be said that there is no prima facie case against the petitioners. Over and above, purshis filed in the above referred criminal case at Ex.9, xerox copy of which has been produced by the complainant in this proceedings, also supports the say of the complainant. In these circumstances, since prima-facie ingredients of offence have been disclosed in the complaint, this petition is required to be rejected.

6. This petition is rejected. Rule is discharged. Interim relief stands vacated.

(R.P.DHOLAKIA,J.)

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